IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

REGULAR SECOND APPEAL 3308 OF 2006

DATE OF DECISION ; 15-09-2006

Inder Singh & others v Piara Singh & another

Present: Mr.V.B.Aggarwal, Advocate, for the appellants

Mr.Pritam Saini, Advocate, for respondent No.1

CORAM : HON'BLE MR.JUSTICE AJAY KUMAR MITTAL

The plaintiff-respondent No.1 filed a suit for permanent injunction which has been decreed by both the Courts below. The unsuccessful defendants have challanged the judgement and decree of Courts below in this regular second appeal.

The plaintiff-respondent No.1 filed a lsuit for permanent injunction restraining the defendants from blocking rasta running through rectangle No.54, Killa Nos. 18 and 23 shown in the Aksijra and in the revenue records.

The facts as averred in the plaint are that plaintiff's father Chanan Singh son of Bhagwan Singh, Arjun Singh son of Basant Singh and Bakhtawar Singh had purchased land measuring 56 kanals comprised in Khewat No.36 min, Khatoni No.93 min, Rectangle No.59, Killa Nos.2(8-0),8(8-0),9(8-0),12(8-0),13(8-0),10/1(2-0), 10/2(6-0),11(8-0) situated at village Niwarsi, district Kurukshetra, according to jamabandi for the year 1955-1956, along with rasta of the width of 2 gathas existing in Khasra No.54/18,23 and rectangle No.59, Killa No.3 on the eastern line, trees, khal, tubewell etc. vide sale deed dated 10-12-1958. Chanan Singh father of plaintiff expired and plaintiff along with his brothers Dharam Singh and Kartar Singh inherited the share in the aforesaid land. Plaintiff along with his brother Dharam Singh and father Chanan Singh had also purchased land measuring 8 kanals comprised in Khewat No.36 min, Khatoni No.94 min,rectangle No.59, Killa No.3 situated at village Niwarsi, tehsil Thanesar, along with rasta and trees etc. vide sale deed dated 30-07-1959. Thereafter , defendant No.14-Sant Singh had purchased 8 Kanals land

comprised in Khewat No.111, Khatoni No.202, Rectangle No.54,Killa No.23(8-0) situated at village Niwarsi,district Kurukshetra,along with rasta and other rights appurtenant thereto. Even defendants 1 to 13 i.e. Inder Singh and others purchased land measuring 8 kanals comprised in Khewat No.112, Khatoni No.209, Rectangle No.54, Killa No.18 gair mumkin abadi and rasta as per jamabandi for the year 1995-1996. 2 gaths wide rasta was also left in this land towards eastern side. The plaintiff claimed that since the date of purchase, father of plaintiff and after his death, plaintiff and other co-sharers are using the disputed rasta. The plaintiff averred that the defendants after the purchase of the aforesaid land are blocking the rasta forcibly and illegally. Inspite of the request made by the plaintiff, the defendants did not stop and this necessitated the plaintiff to file the present suit.

After notice, respondents 1, 3 to 8,10 to 13 filed their written statement jointly and took preliminary objections. It was averred that the plaintiff has no locus-standi to file the present suit and he has no right, title or interest in Khasra No.18 and defendants had purchased full Khasra No.18 and also constructed their houses and left private paths only for the inhabitants of Khasra No.18. It was further averred that there is no rasta in Khasra No.54/18 for ingress and outgress of plaintiff or any other person. In the replication, the plaintiff denied the averments in the written statement. On the basis of the pleadings of the parties, the following issues were framed:-

"1. Whether the plaintiff is entitled to a decree of permanent injunction as prayed for?OPP

2. Whether the plaintiff has no locus standi to file and maintain the present suit?OPD

3. Whether the suit is not maintainable in the present form?OPD

4. Whether the plaintiff has no cause of action to file and maintain the present suit?OPD

5. Whether the plaintiff has not come to this Court with clean hands?OPD

6. Relief."

The trial Court after appreciating the evidence on record decided issue No.1 in favour of plaintiff-respondent. Para 17 of the said judgement reads as under :-

> "From the entire oral and documentary evidence of the parties as discussed above, it is proved that Tara Singh, while executing sale deeds Exhibits P-9 and P-10 had conferred a specific right upon vendees to use the disputed rasta and therefore their right to use the same cannot be defeated by the subsequent execution of sale deed by Manohar Singh son of Tara Singh in favour of defendants 1 to 13. The existence of disputed rasta is also proved from the revenue record as discussed above, however, from the testimonies of DW1,DW2 and DW3, it is proved that they have constructed a wall upon the disputed rasta and have also dumped their garbage etc. in order to obstruct the right of the plaintiff to use the same. It is imperative to mention that existence of disputed rasta over Khasra No.54/23 is admitted by Sant Singh-defendant No.14 in his written statement and is also duly reflected in photographs Exhibits P-1 to P-4 which have been proved by PW1-Prem Sagar. Since the existence and use of disputed rasta by plaintiff has been proved on the record, therefore, merely because the defendants have, during the pendency of the suit, blocked the rasta by constructing a wall, suit of the plaintiff cannot be said to be defeated and the Court is not powerless and helpless and can mould the relief claimed by the plaintiff in order to dispense justice. Since the plaintiff has established his right to use the disputed rasta, therefore, defendants can be directed to remove the garbage and the wall existing upon the disputed rasta in order to restore the use of the same by the plaintiff. Accordingly, defendants are restrained from interfering in the disputed rasta by the plaintiff and are directed to remove the garbage and the wall upon the same and to restore the disputed rasta in its original condition."

Accordingly,the suit filed by the plaintiffs was decreed. On appeal filed by the defendants before the first appellate Court, the judgement and decree of the trial Court was affirmed.

Learned counsel for the appellants has tried to assail the judgement to contend that disputed rasta was not in existence prior to the filing of the suit. On the basis of the appreciation of evidence on record, the trial Court had concurrently recorded that as per sale deeds dated 10-12-1958 and 30-07-1959 Exhibits P-9 and P-10,it was clear that the plaintiff had a right to use rasta. The first appellate Court came to the conclusion that the existence of disputed rasta was proved and that the defendants during the pendency of the suit blocked the rasta .

No illegality or infirmity could be pointed out in the concurrent findings of facts recorded by both the Courts below warranting interference by this Court in regular second appeal.

No question of law much less any substantial question of law arises for consideration in this appeal.